

REMARKS

Initially, applicant would like to thank the Examiner for indicating allowable subject matter in claims 4, 8, 9, 11, 12 and 16. In reliance thereon, claim 1 is amended to include the subject matter of claim 4 and claim 8 is rewritten in independent form.

Claims 1, 3-9, 12-14 and 16 were previously pending in the application. Claims 4 and 14 are canceled, leaving claims 1, 3, 5-9, 12, 13 and 16 for consideration.

Claims 1, 3-9, 12-14 and 16 are rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed.

The position set forth in the Official Action is that applicant fails to disclose peer-to-peer connection between at least one processing element and a single switcher as defined by applicant's supplied definitions. The Official Action states that it is unclear how a switcher and a processing element have the "same capabilities" and how the switcher initiates communication.

To satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that

context, is whatever is now claimed. *Vas-cath, Inc. v Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). In essence, the applicant cannot claim more than was originally disclosed in the application as filed.

The applicant disclosed a peer-to-peer connection between a switcher and a processing element in the original application at least on page 9, lines 1-5. The applicant now claims a peer-to-peer connection between the switcher and the processing element. Accordingly, applicant is not claiming more than originally disclosed.

If applicant were to claim more than originally disclosed, then a 35 USC 112, first paragraph rejection would be proper. Since this is not the case and since one of ordinary skill in the art would recognize the recited peer-to-peer connection as a communication protocol, then applicant has conveyed with reasonable clarity to those skilled in the art that he was in possession of what is now being claimed at the time of filing.

Accordingly, since peer-to-peer as used in claim 1 was originally disclosed and since applicant is not claiming more than was originally disclosed, applicant believes that the written description requirement is satisfied and that the specification as filed conveys with reasonable clarity to those skilled in the art that applicant had possession of the invention at the time the application was filed.

Claims 1, 3-9, 12-14 and 16 are rejected under 35 USC §112, first paragraph, as not being enabling. This rejection is respectfully traversed.

The position set forth in the Official Action is that the specification is enabling for providing a plurality of processing elements and a switcher but is not enabling for a peer-to-peer connection between one of the plural processing elements and a switcher. This rejection cannot be maintained for at least the following reason.

MPEP §2164.01 provides that "the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation". *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1330, 1332 (Fed. Cir. 1991).

Applicant's use of "peer-to-peer" in both the specification and throughout prosecution is communication on the same hierarchical level or the same protocol layer. Applicant notes that the three definitions supplied by applicant of peer-to-peer are not inconsistent with each other and are each directed to communication protocol.

Peer-to-peer defines a relationship between two elements only in terms of communication protocol. A peer relationship as to communication does not require or even suggest equality in every dimension. A processing element and a switcher

may have very different function, but that does not preclude a peer relationship as to communication protocol.

Based on the previously supplied definitions and the level of skill in the art, one of ordinary skill in the art would recognize that a peer-to-peer connection is a communication protocol. Accordingly, one of ordinary skill in the art would be able to use the present invention based on the present disclosure and coupled with the information known in the art without undue experimentation. Therefore, the test of enablement is believed met and withdrawal of the rejection is respectfully requested.

Claims 1, 3-9, 12-14 and 16 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

A rejection based on the above-noted section of the code is appropriate only where applicant has stated, somewhere other than in the application as filed, that the invention is something different from what is defined by the claims. In other words, the invention set forth in the claims must be presumed, in the absence of evidence to the contrary, to be that which applicants regard as their invention. *In re Moore*, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971).

As set forth above, applicant originally disclosed a peer-to-peer connection between a switch and a processing

element. Applicant presently recites a peer-to-peer connection between a switch and a processing element. The peer-to-peer connection as defined by the claims is consistent with what was originally disclosed and thus the claims must be presumed to be that set forth in the application as filed. Moreover, a peer relationship as to communication protocol does not require or even imply a peer relationship as to every parameter, as discussed above. Accordingly, withdrawal of the rejection under 35 USC §112, second paragraph, is respectfully requested.

Claims 1, 3, 5, 7 and 14 are rejected as anticipated by COUTTS et al. 6,311,165. This rejection is respectfully traversed.

Claim 1 is amended to include the subject matter of allowable claim 4. Since claim 4 is indicated as allowable over COUTTS et al., the rejection over COUTTS et al. is believed moot with respect to claim 1. Claims 3, 5, and 7 depend from claim 1 and further define the invention and are also believed patentable.

Claim 14 is canceled and thus the rejection as to this claim is also believed moot.

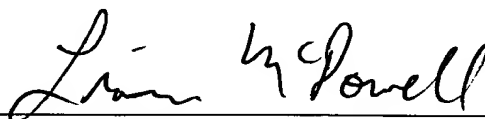
Since the claims remaining in the application are directed to subject matter indicated as allowable or depend from an allowable claim and since the formal matters are believed addressed, the application is believed in condition for

allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Liam McDowell, Reg. No. 44,231
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

LM/lrs